

IN THE SUPREME COURT OF MISSISSIPPI

DR. WILLIE WILSON

APPELLANT

VS.

CAUSE NO. 2016-TS-00163SCT

DELBERT HOSEMANN, IN HIS CAPACITY
AS MISSISSIPPI SECRETARY OF STATE

APPELLEE

The Secretary of State's Response to the Notice *of Appeal*

Appellant Dr. Willie Wilson has filed multiple petitions and notices with this Court, including: (a) *Notice of Appeal Expedited Consideration Requested* docketed in this cause number and (b) *Petition for Expedited and Emergency Consideration of Appeal for Permission to Appeal of Interlocutory Order, and For Mandamus Adding Candidate's Name to the Ballot* docketed in cause number 2016-M-00148. Both filings arise from the same proceeding in Hinds County Circuit Court styled *Dr. Willie Williams v. Delbert Hosemann*, Cause No. 2SCI1:16-cv-0008S-WLK.

On February 9, the Secretary of State filed a motion to dismiss the *Notice of Appeal Expedited Consideration Requested* in this cause number. The motion to dismiss notes that the *Notice* attempts to proceed as an appeal of right from a final judgment yet the circuit court has not issued a final judgment in the underlying proceeding.

Furthermore and per this Court's order, on February 8, the Secretary of State responded in cause number 2016-M-00148 to the substance of Dr. Wilson's contentions. The Secretary of State hereby incorporates that opposition in response to the issues presented in cause number 2016-M-00163.

In addition, the Secretary would bring to the attention of this Court several election statutes which establish that state law does not permit candidates to be added

or removed from ballots once the ballots are finalized and printed 45 days before the election. Mississippi Code Section 23-15-295 provides that a person who has qualified to participate in a primary election has the "right to withdraw his name as a candidate." However, if the notice of withdrawal is not received by election officials "prior to the printing of the ballot," the withdrawn candidate's name remains on the ballot through the election. See Miss. Code Ann. § 23-15-295. Relatedly, Code Section 23-15-365 governs a candidate's withdrawal, death, resignation, or removal after the ballots have been printed. In such instances, the ballot as finalized and printed remains unchanged and voters are authorized to cast a ballot for a write-in candidate using the blank space provided on the ballot. Indeed, even if a political party approves a new candidate as a substitute for the deceased candidate, the ballot is not reprinted and voters must write the name of the "duly substituted" candidate on the ballot themselves. *Id.*

Code Section 23-15-333 governing primary elections is particularly instructive. Section 23-15-333 mandates that ballots must be finalized and printed 45 days prior to election day. See Miss. Code Ann. § 23-15-333(1). The finality of the ballot once printed is underscored by the fact that even the death of a candidate appearing on the printed ballot does not authorize or result in revisions to the final ballot. Instead, the statute directs that "in the event of the death of any candidate whose name shall have been printed on the ballot, the name of the candidate duly substituted in the place of the deceased candidate may be written in such blank space by the voter." *Id.* Election officials are not permitted to revise the finalized and printed ballot to add the name of the substituted candidate.

In sum, election officials are statutorily prohibited from changing the finalized ballot within 45 days of an election even upon the death, resignation, withdrawal removal, or substitution of a candidate. The legislature's statutory directives implicitly recognize two important concepts. First, the orderly administration of elections requires that ballots must become final and unchangeable at some time prior to voting. The statutes set this point as no later than the moment of printing the first finalized ballots 45 days prior to the election. Second, once the ballots are printed – and certainly once voting starts 45 days prior to the election – the addition or subtraction of candidates is prohibited. The prohibition ensures that persons who vote early in the process via absentee ballots have the same slate of candidates as persons who vote later. Importantly, Dr. Wilson can point to no state statute authorizing election officials to change a finalized ballot after voting has commenced.

Conclusion

For the reasons set forth in the Secretary of State's motion to dismiss, the Secretary respectfully submits that the appeal in cause number 2016-TS-00163 should be dismissed.

In the alternative, the Secretary of State respectfully submits that Dr. Wilson is not entitled to relief in any form and that the order by the Hinds County Circuit Court denying the motion for preliminary injunction should be affirmed.

Respectfully submitted, this the 9th day of February, 2016.

BY: **JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed electronically with the Clerk of Court using the Court's ECF system and thereby served on the following persons:

Samuel L. Begley
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I hereby certify that the foregoing documents were served via U.S. Mail, first class, postage prepaid on the following non-ECF participant:

Honorable Winston L. Kidd
407 East Pascagoula Street
Jackson, MS 39205

This the 9th day of February, 2016.

S/Harold E. Pizzetta, III